



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on March 28, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified that the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. The Landlord testified that documentary evidence upon which she intended to rely was served on the Tenants by registered mail. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The Tenants testified the tenancy began on August 1, 2012. The tenancy ended on March 31, 2018, after the Landlord asked the vendor of the property, in writing, to issue a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 31, 2018 (the "Two Month Notice"). During the tenancy, rent in the amount of \$1,600.00 per month was due on the first day of each month. The Tenants confirmed there are no outstanding issues concerning deposits.

The Tenants claim \$3,200.00 as compensation under section 51 of the *Act*. The parties agreed the Tenants vacated the rental property on March 31, 2018, in accordance with the Two Month Notice, which was issued on the following basis:

*All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

[Reproduced as written.]

The Tenants submitted a copy of the Landlord's request to the vendor to issue the Two Month Notice, and a copy of the Two Month Notice.

The Tenants testified the Landlord did not use the rental property for the stated purpose. In support, the Tenants submitted a copy of an online advertisement regarding the rental property. The advertisement described the rental property and indicated it was "Available for rent May 1, 2018."

In reply, the Landlord acknowledged the property we rented as claimed. She stated she intended to live in rental property and had performed some renovation in preparation, but was going through a divorce and could not afford to live there. The Landlord also suggested the condition of the rental unit was bad for her allergies.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

At the time the Two Month Notice was issued, section 51 of the *Act* read as follows:

*(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

...

*(2) In addition to the amount payable under subsection (1), if*  
*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*  
*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

[Reproduced as written.]

In this case, I find the Two Month Notice was issued by the vendor at the request of the Landlord. The Two Month Notice was issued on the basis that the purchaser or a close family member intended in good faith to occupy the rental unit. However, as confirmed by the Landlord, I find the property was made available to rent for May 1, 2018, one month after the tenancy ended. Accordingly, I find the rental property was not used for the purpose stated in the Two Month Notice. As a result, I find the Tenants are entitled to recover double the monthly rent payable under the tenancy agreement, or \$3,200.00. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$3,300.00, which is comprised of \$3,200.00 in compensation and \$100.00 in recovery of the filing fee.

### Conclusion

The Tenants are granted a monetary order in the amount of \$3,300.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 25, 2018

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Residential Tenancy Branch